

1998

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) |
| |) CC. Dkt. No. 97-213 |
| Communications Assistance |) |
| for Law Enforcement Act |) DA 98-762 |
| |) |

**Ameritech's Comments on the Petitions for Rulemaking to Establish
Technical Requirements and Standards for CALEA**

With these Comments, the Ameritech Operating Companies¹ and Ameritech Mobile Communications, Inc. (collectively referred to as "Ameritech") respectfully respond to the Petitions for Rulemaking filed by a number of parties under Section 107 of the Communications Assistance for Law Enforcement Act ("CALEA").² The Petitions request that the Federal Communications Commission ("Commission") initiate a Rulemaking to resolve the current stalemate between the industry and law enforcement and determine what capabilities are required under Section 103 of CALEA.³ 47 U.S.C. sec. 1002.

CALEA requires that telecommunications carriers expeditiously isolate and enable the government to intercept all wire and electronic communications, and to access call

¹ The Ameritech Operating Companies are local exchange carriers that operate in a five state region under the names of Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio and Wisconsin Bell, Inc. d/b/a Ameritech Wisconsin.

² Communications Assistance for Law Enforcement Act, 47 U.S.C. sections 1001 - 1010.

³ The Petitions were filed by the Department of Justice and the Federal Bureau of Investigation ("FBI"), the Telecommunications Industry Association ("TIA"), and the Center for Democracy and Technology ("CDT"). Ameritech believes that Cellular Telecommunications Industry Association's Petition for Rulemaking in July, 1997, requesting that the Commission declare the standard to be a 'safe harbor' under Section 107 of CALEA is moot.

identifying information that is reasonably available to the carrier. 47 U.S.C. sec. 1002(a)(1) and (2). CALEA also requires telecommunications carriers to deliver such intercepted communications and call identifying information to the government pursuant to a court order or other law authorization. 47 U.S.C. sec. 1002(a)(3). However, while CALEA established specific obligations on telecommunications carriers to provide information to law enforcement, because CALEA continues to require interceptions and pen registers and trap and traces to be conducted only pursuant to lawful authorization, it did not in any way expand the information that law enforcement is entitled to under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, modified by the Electronic Communications Privacy Act of 1986 (hereinafter collectively referred to as "Title III").⁴

Nevertheless, since CALEA has been passed, there has been significant debate between and among the telecommunications carriers, manufacturers, and the FBI as to what the legislation actually requires. Consequently, in making its decision on the issues raised in these Petitions, the Commission will have to interpret the legal requirements of Title III in addition to the requirements of CALEA. In this regard, the Commission will be responsible for determining exactly what information Congress intended law enforcement to be provided under Title III and, in a case of first impression, for interpreting the meaning of the language "call-identifying information that is reasonably available."⁵

⁴ See 18 U.S.C. sections 2510 - 2520.

⁵ 47 U.S.C. sec. 1002(a)(2).

At the outset Ameritech would like to state its support for the Interim Standard J-STD-025.⁶ The Interim Standard is industry's comprehensive attempt to realistically and reasonably interpret the requirements of CALEA consistent with Title III. And, the fact the FBI has challenged only about eleven (11) items in the Interim Standard is a testament to the industry's efforts in developing a workable solution. Ameritech believes that the Interim Standard should be adopted by the Commission in its entirety.

Because of Ameritech's support of the Interim Standard, Ameritech believes that the FBI's additional features go beyond the requirements of CALEA. However, these Comments will be limited to only those issues which raise particular concern to Ameritech.

A. Interception of Conference Calls or Parties on Hold

Ameritech does not support the FBI's statement that CALEA requires telecommunications carriers to provide law enforcement with the "ability to intercept the communications of all parties in a conference call supported by the subscriber's service or facilities."⁷ The FBI argues that CALEA requires carriers to allow law enforcement to continue to intercept communications even though the targeted number (or subscriber number) puts parties on hold, or even drops off the line while a conference call continues.⁸ And despite the fact that the FBI acknowledges it previously has never received this type of call content, the FBI's justification for supporting its argument is merely a blanket statement that Title III authorizes law enforcement to "acquire all criminal

⁶ Interim Standard, Lawfully Authorized Electronic Surveillance, J-STD-025, TIA TR45.2 and Committee T1, November 20, 1997.

⁷ FBI Petition at 27.

⁸ *Id.* at 30.

communications of all parties conversing over the subscriber's facilities or services, including communications on any 'leg' of a conference call at all times,"⁹ regardless of whether the targeted number remains as part of the call.

Ameritech does not read Title III this broadly. Title III is written to protect the privacy of individuals and prohibit parties from conducting wire and electronic surveillance without proper authorization. In this regard, Ameritech is liable for any wire or electronic interception that is conducted without proper legal authorization. In addition, Ameritech must have a "good faith reliance" on a court order in order to avoid civil liability for conducting an interception.¹⁰

Title III is designed to balance the privacy interests of the individual with law enforcement's ability to enforce the law. In this regard, the law establishes a number of restrictions and limitations on conducting interceptions. Specifically, parties are prohibited from conducting these types of activities, unless those parties are involved in the communication.¹¹ Further, law enforcement must obtain the proper court order or other legal authorization prior to conducting an interception.¹² And, finally, while telecommunications carriers must provide technical assistance to law enforcement, carriers are also held liable for violating the law.¹³ Thus, as noted above, the carrier must have a good faith reliance on the court order in order to avoid liability.¹⁴

⁹ *Id.*

¹⁰ *See* 18 U.S.C. section 2520(c).

¹¹ 18 U.S.C. sec. 2511.

¹² *Id.*

¹³ *Id.*

While a Title III court order lists the facilities and services authorized to be intercepted regardless of the individual using the facilities and services, Ameritech does not interpret that court order to automatically include conversations between non-targeted numbers or subscribers, when the targeted number is either temporarily or completely removed from the communication. Despite the FBI's dramatic example on page 31 demonstrating how criminal activity can occur over the conference call or between parties on hold, the issue raised by the FBI is not whether criminal activity can occur once the subscriber or targeted number is put on hold or dropped from the call. Rather, the issue is whether Congress intended in Title III to give law enforcement the ability to receive wire and electronic communications, after the targeted number has been removed from the call.

Ameritech respectfully requests the Commission to decide this case of first impression, and establish whether CALEA capabilities require telecommunications carriers to provide law enforcement with conversations between parties on hold or on a conference call when the targeted number is no longer a part of the call.

B. Delivery of Call Identifying Information over a Call Content Channel

Ameritech does not support the FBI's argument that all call identifying information must be delivered on the call data channel and cannot be delivered over a separate call content channel.¹⁵ In this argument, the FBI claims that it is more cost efficient and effective to require that all call identifying information be delivered over the call data channel, and not over a separate call content channel. The FBI of course does not specify

¹⁴ 18 U.S.C. sec. 2520(c).

¹⁵ FBI Petition at 47.

for whom it is most efficient if the post cut-through information is provided over the call data channel. As explained below, it is clearly not efficient and effective for telecommunications carriers to have this obligation.

Prior to coming to a decision on this issue, the Commission must make several important interpretations of CALEA as well as must consider all the relevant facts. Most importantly, the Commission must decide what is "call-identifying information" and when is it "reasonably available." Having set those parameters, the Commission then must consider and understand some of the accommodations that industry has made to law enforcement regarding this particular issue.

The post-cut-through digits the FBI seeks are digits dialed after a the call has been connected initially. In many instances, these post-cut-through digits are buried within packet data streams that continue throughout the entire communication. In other instances, the post-cut-through digits are digits dialed into databases such as credit card numbers, social security numbers, bank account numbers, or personal identification numbers (PIN). Because these digits are dialed after the initial connection has been made, some parties argue that these digits do not meet the definition of call-identifying information established in CALEA and therefore do not have to be provided except pursuant to a Title III court order.

Nevertheless, assuming that the FBI has the authority to receive these post-cut-through digits even under pen register and trap and trace authorizations, carriers only have to provide call identifying information if it is reasonably available. 47 U.S.C. sec. 1002(a)(2). Requiring carriers to put all that information on a call data channel obligates

carriers to extract those post-cut-through digits from the content of a call and then feed the call identifying information on to a call data channel prior to providing it to law enforcement. Needless to say, extraction of post-cut-through digits is an expensive and timely obligation to be placed on telecommunications carriers. It is neither cost effective or efficient for carriers to perform this function. In reality, the FBI wants carriers to have this obligation so that the FBI may avoid purchasing two channels, a data channel and a content channel,¹⁶ when operating certain interceptions or pen registers and trap and trace.

More importantly, however, Ameritech is seriously concerned about having the responsibility to actually scrub information obtained pursuant to a court order before providing it to law enforcement. Obviously, Ameritech would have no knowledge of the criminal activity the FBI is intercepting, and Ameritech does not believe that CALEA establishes a principle that a telecommunications carrier must review and scrub information, *i.e.*, minimize the information, prior to providing it to law enforcement. At this time, Ameritech has no known method of differentiating between what digits would have to be extracted from call content. Ameritech does not believe carriers should be in the untenable position of potentially failing to provide law enforcement with necessary information.

Rather, Ameritech believes that law enforcement's obligation to minimize the interception of communications not related to the criminal investigation is the solution to this issue.¹⁷ Specifically since Congress clearly understood that in some instances the FBI

¹⁶ Telecommunications carriers provide these channels to law enforcement pursuant to tariffs.

¹⁷ 18 U.S.C. sec. 2518(5), and FBI Petition at 29.

would have access to information not related to its investigation and required law enforcement to minimize its use of that information, law enforcement can clearly extract the necessary data from the call content channel.

Based on the foregoing, post-cut-through digits are not reasonably available call identifying information if carriers are required to extract the data. Consequently, CALEA does not require telecommunications carriers, *for any reason*, to extract post-cut-through digits from call content and provide them to law enforcement as part of the call data channel.

C. Timely Delivery of Call Identifying Information

Ameritech does not support the FBI's proposed 100 millisecond (ms) standard for the delivery of call identifying information to law enforcement. The FBI argues that such timing is necessary in order to have the proper correlation between the call data channel and the call content channel.

While Ameritech understands and supports the need for prompt delivery of call identifying information, Ameritech believes that the 100 ms time period is too restrictive and unnecessary. In this regard, the Interim Standard recognizes that different call-identifying information provided within different operating platforms and solutions will not all have the same delivery time frames. The standards committee is currently investigating a possible outside time limit on providing this information, for example one proposal is a maximum of three (3) seconds at least 98% of the time. Such a time frame will also be affected if there is a centralized delivery system, which most likely will add additional time to delivery. Thus, a 100 ms delivery standard will not be available for all solutions for all platforms. Moreover, the current standards committee is investigating other methods of

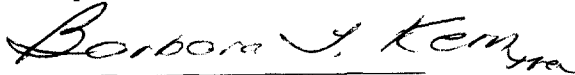
establishing the proper correlation between the call data channel and the call content channel, which would render the 100 ms time period unnecessary.

Consequently, while Ameritech supports the need for quick delivery, there is no justification for a 100 ms standard. Thus, the Commission should reject the FBI's position.

D. Conclusion.

Based on the foregoing, the Commission should adopt the Interim Standard as the Standard for Section 103 capability under CALEA, and reject the FBI's Petition consistent with the Comments provided herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Beth Horsman, hereby certify that I have on this 20th day of May, 1998, caused to be served by first class mail, postage prepaid, or by hand delivery, a copy of the foregoing Ameritech's Comments on the Petitions for Rulemaking to Establish Technical Requirements and Standards for CALEA to the following:

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